

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-291827-D6
AND ALL OTHER SEAMAN DOCUMENTS
Issued to: KARL KARISSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1612

KARL KARISSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 31 August 1966, an Examiner of the United States Coast Guard at Seattle, Washington suspended Appellant's seaman's documents for 12 months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as an electrician on board the United States SS BOISE VICTORY under authority of the document above described, on or about 14, 15, and 16 July 1966, Appellant wrongfully created a disturbance on three separate occasions, and wrongfully battered a fellow crew member with a coffee cup on another occasion.

At the hearing, Appellant first elected to act as his own counsel, and later was represented by counsel. The proceedings being commenced in absentia, the Examiner entered for the Appellant a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the official log book of the vessel and the testimony of three witnesses to the misconduct alleged.

In defense, Appellant offered in evidence a stipulation of testimony of an officer on board the vessel.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and all specifications had been proved. The Examiner then entered an order suspending all documents, issued to the Appellant, for a period of 12 months outright.

The entire decision was served on 2 September 1966. Appeal was timely filed on 13 September 1966.

FINDINGS OF FACT

On 14, 15 and 16 July 1966, Appellant was serving as an electrician on board the United States SS BOISE VICTORY and acting under authority of his document while the ship was in the port of Seattle, Washington.

On the evening of 14 July 1966 Appellant followed Mr. Jack Magnusson, the night relief officer, up the gangway and onto the main deck. Appellant then proceeded into the electrician's room next to Mr. Magnusson's quarters. Mr. Magnusson asked the Appellant to identify himself. Appellant replied in a very belligerent manner, using vile and abusive language and threatening to fight relief officer Magnusson.

The following day Appellant accosted C. Taylor, messman, in a passageway outside the messhall and for no apparent reason threw a punch at him. The chief cook responded to Taylor's call for aid and broke up the disturbance. Taylor then went to the washroom to shower and shave. Appellant followed Taylor and threw a coffee cup at him in the washroom, causing a deep cut on the top of Taylor's head.

Shortly after this occurred relief mate Crenshaw observed Appellant staggering down the passageway in the vicinity of the saloon, and talking in a loud and disturbing voice. A little later this officer saw Appellant in his foc's'le acting in a drunken and belligerent manner to the chief engineer, who was holding him in his room until the police arrived.

On 16 July, Appellant was seen at the foot of the gangway shouting in obscene language to the colored boys aboard ship. At this time Appellant had a chain in his hand which he tried to throw at one of the crewmen. Appellant was again removed from the scene by the local police.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was denied due process when the Examiner did not sua sponte grant a continuance when Appellant's counsel withdrew from the case.

APPEARANCE: McMullen, Brook, Knapp and Greier, Settle
Washington; by Robert J. Grenier, Esquire, of
Counsel

OPINION

Appellant was not present when the proceedings opened on 28 July 1966. After a showing by the Investigating Officer that Appellant had been served with charges three days earlier, and had

acknowledged such service, and further that Appellant had been in the Investigating Officer's office the day before and was reminded of the scheduled date, the Examiner proceeded in absentia in accordance with 46 CFR 137.20-25(a). At the conclusion of the testimony by the government's witnesses the Examiner adjourned the hearing.

The proceedings were re-convened on 16 August, Appellant being present. He specifically declined his right to counsel, electing to represent himself instead. Appellant stated that he wanted to subpoena certain records and reports concerning his arrests on the dates alleged. The Examiner granted these requests and the hearing was adjourned.

On 25 August the hearing was re-opened and for the first time Appellant indicated that he desired counsel. The hearing was then adjourned until 29 August.

On this date Appellant appeared at the Examiner's office with his counsel, a Seattle attorney. Here Appellant's counsel advised him to change his plea, but Appellant refused to do so. His counsel then made a formal withdrawal from the case. Appellant then left the room indicating that he would have nothing further to do with the matter.

That afternoon the hearing was re-convened and following a motion by the Investigating Officer to proceed in absentia, the ship's log book was entered and the case closed.

All specifications were proved by substantial and probative evidence

It appears from the record that every effort was made by both the Examiner and the Investigating Officer to afford Appellant the rights to which he was entitled. Appellant nevertheless urges that he was denied due process when the hearing was concluded in his absence after withdrawal of his attorney. Appellant, however, made no indication he desired another continuance, or wanted another counsel. Under the circumstances, Appellant having due notice, of the re-convening time and date, the doctrine of waiver must be applied. Elgin, Joliet and Eastern Railway Co. v. Burley et al, 327 U. S. 661; Appeal No. 1219.

ORDER

The order of the Examiner dated at Seattle, Washington on 31 August 1966, is

AFFIRMED.

P. E. TRIMBLE

Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 10th day of May 1967.

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